

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

STEVEN JAMES,

Petitioner,

9:18-cv-864 (BKS/CFH)

v.

SUPERINTENDENT,

Respondent.

Appearances:

Petitioner pro se:

Steven James
Cohoes, NY 12047

For Respondent:

Letitia James
Attorney General for the State of New York
Priscilla I. Steward
Assistant Attorney General
28 Liberty Street
New York, NY 10005

Hon. Brenda K. Sannes, United States District Judge:

MEMORANDUM-DECISION AND ORDER

On July 25, 2018, Petitioner pro se Steven James filed a petition seeking a writ of habeas corpus under 28 U.S.C. § 2254 challenging his conviction, following a guilty plea, of attempted criminal possession of a weapon in the second degree. (Dkt. No. 1). On November 6, 2018, Respondent filed an answer, accompanied by the state court records. (Dkt. Nos. 7–8). Petitioner filed a traverse on November 29, 2018, and a supplemental traverse on April 17, 2019. (Dkt. Nos. 10, 13). This matter was assigned to United States Magistrate Judge Christian F. Hummel who, on September 13, 2021, issued a Report-Recommendation recommending that Petitioner’s

petition be denied and dismissed because the Fourth Amendment claims that he raised in the petition are foreclosed by *Stone v. Powell*, 428 U.S. 465 (1976). (Dkt. No. 16). Magistrate Judge Hummel advised the parties that under 28 U.S.C. § 636(b)(1), they had fourteen days within which to file written objections to the report, and that the failure to object to the report within fourteen days would preclude appellate review. (*Id.* at 7–8). No objections to the Report-Recommendation have been filed.

As no objections to the Report-Recommendation have been filed, and the time for filing objections has expired, the Court reviews the Report-Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 228–29 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory committee’s note to 1983 amendment. Having reviewed the Report-Recommendation for clear error and found none, the Court adopts the Report-Recommendation in its entirety.

For these reasons, it is

ORDERED that the Report-Recommendation (Dkt. No. 16) is **ADOPTED** in its entirety; and it is further

ORDERED that the Petition is **DENIED** and **DISMISSED**; and it is further

ORDERED that no certificate of appealability (“COA”) is issued because Petitioner has failed to make “a substantial showing of the denial of a constitutional right” as required by 28 U.S.C. § 2253(c)(2). Any further request for a COA must be addressed to the Court of Appeals (Fed. R. App. P. 22(b)); and it is further

ORDERED that the Clerk serve a copy of this Order upon the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: September 30, 2021
Syracuse, New York


Brenda K. Sannes
U.S. District Judge